

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LINDA M. BECKLEY
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-368
Case No. 77-1037

S.S.A. No. - - - - -

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. OAK-FED-04080

The Department appealed from the decision of the Administrative Law Judge which waived the recovery of a portion of an overpayment established by the Department.

STATEMENT OF FACTS

The claimant concerned filed a regular California claim for unemployment compensation benefits effective November 16, 1975. The weekly benefit amount established by this claim was \$77. The claimant exhausted benefits payable on this claim when she drew her final benefit check for the week ended August 21, 1976. Sometime during the life of this claim, the claimant had completed a form entitled "Claimant Profile," which was retained in the Department records of the claim. On this form the claimant stated that prior to filing her California claim she had been employed in Anchorage, Alaska, from May 1975 to September 15, 1975.

After the claimant exhausted her California claim, she was informed by the Department that she was entitled to file a claim for federal-state extended benefits. In filing a federal-state extension claim, a claimant is required to complete a form identified as "Request for Determination of Entitlement to Federal State Extended Benefits." When the claimant filed her claim for federal-state extended benefits, she was presented with this form which had been completed by an employee of the local

office in which the claimant filed her claim. She was instructed to sign the form, which she did. On this form, which the claimant had not personally completed, was the following question:

"Have you had any employment in another state (including the District of Columbia and Puerto Rico), federal employment, or military service during the last 24 months?"

There were two boxes following this question entitled "Yes" and "No." The "No" box had been checked.

Subsequent to establishing the federal-state extended claim effective August 22, 1976, the claimant received seven weeks of benefits on this claim at the weekly rate of \$77, for a total of \$539. It was then discovered that the Department had overlooked the fact that the claimant had wage credits in the State of Alaska which entitled her to initiate a regular unemployment insurance claim against that state. At the request of the Department the claimant filed such claim which was backdated to August 2, 1976. This Alaskan claim provided the claimant with a maximum award of \$784 payable at the weekly rate of \$28. The claimant received \$196 from Alaska for the same period she was drawing extended benefits from the State of California.

REASONS FOR DECISION

Under federal law a claimant who exhausts benefits on a regular unemployment insurance claim may file a claim for federal-state extended benefits if that individual is not entitled to file a regular claim for unemployment compensation benefits under the law of any other state (see Title 20, section 615.4 of the Code of Federal Regulations).

In this case the claimant was not entitled to file a claim for federal-state extended benefits effective August 22, 1976, because she had sufficient wage credits in Alaska to establish a regular claim. Thus, the benefits the claimant received on the federal-state extended claim resulted in an overpayment.

Section 1375 of the California Unemployment Insurance Code provides:

"Any person who is overpaid any amount as benefits under this part is liable for the amount overpaid unless:

(a) The overpayment was not due to fraud, misrepresentation or wilful nondisclosure on the part of the recipient, and

(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience."

It is entirely clear that the overpayment which the claimant received was not due to any fraud, misrepresentation or wilful nondisclosure on her part.

What is necessary to be decided is if there was "fault" in the receipt of the overpayment and whether recovery of the amount overpaid would be against equity and good conscience.

This Board has previously held, in Miscellaneous Decision No. 360, that fault is something less than fraud, misrepresentation, or wilful nondisclosure, and implies a degree of negligence or blame attributable to the receipt of erroneous payments such as, for example, failure to disclose to the Department facts within the recipient's knowledge which were known, or should have been known, to be material in determining eligibility for benefits. Fault does not signify wilful intent or evil design; rather fault results from negligence, an error of judgment, or inadvertence due to lack of care or carelessness.

It may be contended that the claimant was at fault in not carefully reading the form she signed which established her federal-state extended claim. However, it is apparent that the claimant was advised by an employee of the Department to sign the form. She complied.

In referring to the extent to which a claimant may rely on Department representations, the California Attorney General in Opinion No. 47-144 (10 Ops. Cal. Atty Gen. 34) stated:

" . . . The claimant may be wholly without advice or ill advised as to his rights when he comes into the office. To him the person behind the counter is an informed person, and he will invariably rely upon the information he is given. If that employee advises him . . . he will place credence in such advice. . . ."

In the circumstances of this case the Board does not believe that the mere fact that the claimant did not carefully and exhaustively review the completed form placed before her for signature should be regarded as "fault" in the receipt of the overpayment. It is evident that the claimant had no reason to believe that she was not entitled to the federal-state extended benefits which she received. Further, the record discloses that the Department was fully informed by the claimant of her employment in the State of Alaska. The Department knew or should have known that the claimant would be entitled to a claim for benefits based on wages earned in that state.

In short, we conclude that the claimant must be found to be without fault within the meaning of section 1375 of the code.

It is appropriate that attention now be turned to deciding whether it would be against equity and good conscience to require the claimant to repay the overpayment.

In including the phrase "equity and good conscience" in section 1375 of the code it is apparent that the legislature intended that benefits overpaid be recovered only after a careful and deliberate consideration of all of the factors leading up to the overpayment and a complete evaluation of the results to the claimant in imposing recovery of the overpayment. The California Supreme Court in Gilles v. Department of Human Resources Development (1974), 11 Cal. 3d 313; 113 Cal. Rptr 374, considered specifically the phrase "equity and good conscience." In that case the claimant had been put on notice that benefits he received could at a future time be considered to be benefits overpaid. The court stated:

"Section 1375, however, says nothing of notice, but enunciates a standard of 'equity and good conscience' -- language of unusual generality. Such broad terms necessarily anticipate that the trier of fact, instead of attempting

to channelize his decision within rigid and specific rules, will draw upon precepts of justice and morality as the basis for his ruling. Thus the language of section 1375 impliedly rejects the notion that the board can establish a rule which focuses decision upon a single narrow issue such as notice; it involves a panoramic vision that encompasses all factors which might persuade an individual -- or a government -- of good conscience to forego recoupment of moneys previously paid.

"Notice is indeed one relevant factor, since a claimant who receives timely warning that he may be called upon to repay benefits cannot blindly assume no such obligation will be imposed. But to hold that notice, and notice alone, serves as the measure of the chancellor's conscience distorts the enactment. A person of 'equity and good conscience,' we believe, would additionally consider such matters as the cause of the overpayment, whether the claimant received only normal unemployment benefits or some extra duplicative benefit, whether the claimant changed his position in reliance upon receipt of the benefit, and whether recovery of the overpayment, by imposing extraordinary hardship on the claimant, would tend to defeat the objectives of the Unemployment Insurance Code."

Applying these principles to the facts in this case, it is apparent that the overpayment was occasioned by the error of the Department. It is also clear that a portion of the overpayment received by the claimant represented duplicate benefits received from California and Alaska. In short, the \$196 received by the claimant from Alaska while she was drawing unemployment insurance benefits from California was duplicative of compensation received.

Under the California Unemployment Insurance Code a claimant's weekly benefit amount is based upon wages earned during the base period of the claim and when the weekly benefit amount is correctly computed the claimant is entitled to no more than that amount during her weeks of eligibility while unemployed. The laws of other states compute weekly benefit amounts in much the same manner. Thus, if a claimant receives benefits from two states for the same week of unemployment, that claimant has received duplicate benefits to which, under the law, he or she is not entitled. To permit the claimant to retain such duplicate benefits, in circumstances where, as here, there

would be no extraordinary hardship, would be manifestly unjust. Thus, it would be against equity and good conscience to permit the claimant to retain duplicate benefits involved herein. This does not mean, of course, that the claimant in this instance who received duplicate benefits through no fault of her own would be required to repay the total amount of benefits received, but rather should be obligated to repay that portion of the total amount received which represents duplication. Accordingly, it is concluded that the \$196 received from Alaska was a duplicate of benefits received from California and should be recouped. However, in the Board's view the \$343 balance of the overpayment if recovered would ". . . tend to defeat the objectives of the Unemployment Insurance Code," and would be against equity and good conscience.

DECISION

The decision of the Administrative Law Judge is affirmed. The claimant has been overpaid benefits of \$539. However, recovery of \$343 of that amount is waived; the claimant is liable for the balance.

Sacramento, California, October 25, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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